

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Art Unit: 1791
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CHRISTENSEN, Soeren Flygenring) Examiner:
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Serial No.: 10/583,997) Washington, D.C.
))
Filed: August 11, 2008) September 11, 2008
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For: APPARATUS AND METHODS) Docket No.: CHRISTENSEN=9A
FOR ANALYSIS AND SORTING)
OF PARTICLES SUCH AS...) Confirmation No.: 1706

PETITION TO VACATE ERRONEOUS
NOTIFICATION OF DEFECTIVE RESPONSE,
AND RESPONSE TO NDR

U.S. Patent and Trademark Office
Customer Service Window
Randolph Building, Mail Stop Petition
401 Dulany Street
Alexandria, VA 22314

S i r :

1. Applicants hereby petition, under 37 CFR 1.181, for the commissioner to exercise his supervisory authority and vacate the notification of defective response mailed August 27, 2008 on the ground that the response in question (August 11, 2008) was not defective. No petition fee is required under 1.181.

It is true that we incorrectly counted 20 total claims when in fact there were 21 claims, and hence the credit card payment of \$1010 was short \$50.

However, the last paragraph of the response stated

the Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR 1.16 and all patent processing fees under 37 CFR 1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR 1.18.

A deposit account authorization of this type is proper under 37 CFR 1.25 and MPEP 509.01, and on the date of the response (August 11, 2008), we had sufficient funds (\$1757.52) to cover a charge of \$50.

Hence, OIPE should simply have charged the missing \$50 to our deposit account at that time, and considered the response to be complete.

We note that since the deposit account authorization rendered the response complete, the notification of defective response was erroneous, and there should be no charge of applicant's delay pursuant to 37 CFR 1.704(c)(7).

The PTO accordingly should charge the missing fee to the aforementioned deposit account, nunc pro tunc.

2. Should the above Petition be denied, then, as a response to the NDR, the PTO is directed to charge the fee deficiency of \$50 to our deposit account 02-4035.

Respectfully submitted,

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